

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

**Kimberly S. SISK, individually and
as mother and natural guardian of
S.A.S., a minor,**

Plaintiff,

v.

**ABBOTT LABORATORIES, an
Illinois corporation,**

Defendant.

Case No. 1:11-cv-00159-MR-DLH

Judge Martin Reidinger

Magistrate Judge Dennis L. Howell

**ABBOTT LABORATORIES' OBJECTION AND MOTION TO STRIKE
PLAINTIFF'S SUPPLEMENTAL FILING IN OPPOSITION TO ABBOTT'S
MOTION TO DISMISS, OR ALTERNATIVELY, FOR LEAVE TO FILE A
SHORT RESPONSE TO PLAINTIFF'S SUPPLEMENTAL FILING**

NOW COMES Defendant Abbott Laboratories ("Abbott"), through counsel, and hereby objects to and moves to strike Plaintiff's supplemental filing in support of her opposition to Abbott's Motion to Dismiss ("Plaintiff's Supplemental Filing") (Docket No. 84). Alternatively, Abbott seeks leave to file a short response to Plaintiff's Supplemental Filing, attached hereto as Exhibit A. In support of this motion, Abbott states as follows:

1. Plaintiff filed a Response in Support of her Memorandum in Opposition to Abbot's Motion to Dismiss on February 2, 2012. *See* Docket No. 84. This Response attached as an exhibit Memorandum and Opinion Order,

Security National Bank v. Abbott Laboratories, No. 11-CV-4017-DEO, 2012 U.S. Dist. LEXIS 11929 (N.D. Iowa Feb. 1, 2012).

2. Upon information and belief, Plaintiff did not seek leave of the court to file a Response in support of her opposition to Abbott's Motion to Dismiss, nor was such leave granted to her. Effectively, then, Plaintiff's filing is an attempt to file a sur-reply to Abbott's Motion to Dismiss. But the filing of a sur-reply is not permitted and/or contemplated under the Federal Rules of Civil Procedure, the Local Rules for the Western District of North Carolina, or any Orders of this Court without first seeking leave of the Court.

3. Plaintiff's Response provides no explanation as to why her submission provides supplemental authority to Abbott's Motion to Dismiss, nor does it provide any indication what the relevance of her submission is.

4. Abbott believes the submission to be wholly irrelevant to this case because the submission involves a product liability case governed by Iowa common law, whereas this case is governed by North Carolina negligence law as informed by the North Carolina Product Liability Act, N.C. Gen. Stat. § 99B-1.1 *et seq.*

5. To the extent the court gives consideration to Plaintiff's Response, Abbott requests leave to file a Reply further explaining the irrelevance of Plaintiff's submission (attached hereto as Exhibit A).

6. Accordingly, Defendant Abbott Laboratories Objects to Plaintiff's filing of a Response in support of her Opposition to Defendant's Motion to Dismiss and requests the Court to strike her unauthorized submission (Docket No. 84). In the alternative, to the extent the Court considers Plaintiff's Response, Abbott requests leave to file a short Reply to Plaintiff's Response, which is attached hereto as Exhibit A.

Dated: February 22, 2011

Respectfully submitted,

Jones Day

s/ Paula S. Quist

June K. Ghezzi (admitted pro hac vice)

Email: jkghezzi@jonesday.com

Paula S. Quist (admitted pro hac vice)

Email: pquist@jonesday.com

77 West Wacker Drive, 35th Floor

Chicago, IL 60601-1692

Telephone: (312) 782-3939

Facsimile: (312) 782-8585

James W. Williams

Email: JWilliams@roberts-stevens.com

ROBERTS & STEVENS, P.A.

BB&T Building, Suite 1100

One West Pack Square

Asheville, NC 28801

Telephone: (828) 252-6600

Facsimile: (828) 253-7200

Counsel for Defendant Abbott Laboratories

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CERTIFICATE OF SERVICE

I certify that, on February 22, 2012, Defendant Abbott Laboratories' Objection and Motion to Strike Plaintiff's Supplemental Filing In Opposition to Abbott's Motion to Dismiss, or Alternatively, For Leave to File A Short Response to Plaintiff's Supplemental Filing, and this certificate of service, were electronically filed on behalf of Abbott Laboratories through the Court's CM/ECF system, which will provide electronic notice to the following counsel of record:

Stephen C. Rathke
Kate G. Westad
LOMMEN, ABDO, COLE, KING &
STAGEBERG, P.A.
steve@lommen.com
kate@lommen.com

Mary E. Euler
MCGUIRE, WOOD & BISSETTE, PA
meuler@mwbavl.com

s/ Paula S. Quist